

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TUERESA A. PALMER and U.S. POSTAL SERVICE,
POST OFFICE, Harrisburg, PA

*Docket No. 99-472; Submitted on the Record;
Issued August 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's benefits effective September 19, 1994.

On September 9, 1994 appellant, then a 46-year-old letter sorting machine operator, filed a notice of traumatic injury alleging that on that same date she injured her left leg or thigh when another employee pulled nesters, which hit a case, which fell and struck her on the left thigh in the course of her federal employment. The Office accepted the claim for a contusion of the left thigh.

On September 9, 1994 appellant sought treatment at the Polyclinic Medical Center. Dr. Hildrew, an osteopath, diagnosed a crush injury to the left thigh. Appellant received further treatment from the center on September 12, 14 and 15, 1994. On September 19, 1994 clinic notes indicated that appellant was capable of returning to work without restriction.

On November 2, 1994 Dr. Robert R. Kaneda, an osteopath, indicated that appellant was capable of returning to work. He noted that appellant continued to complain of considerable symptoms, but that the muscle soreness appellant was complaining of should resolve with time.

On November 9, 1994 Dr. Robert O. Blake, a chiropractor, diagnosed lumbar intervertebral disc syndrome, sacrum dysfunction; myofascial pain syndrome and cervical brachial syndrome. He checked "no" to indicate that appellant could not return to his usual employment.

On November 18, 1994 Dr. Robert L. Green, an osteopath, examined appellant regarding her complaints of diffuse musculoskeletal pain. He noted the history of appellant's injury on September 9, 1994 and reported that appellant was poorly motivated to perform during the examination. Dr. Green indicated that magnetic resonance imaging (MRI) scan was normal. He

diagnosed a status post-reported work-related contusion. Dr. Green indicated that there was no reason appellant could not return to full-time gainful employment.

On March 21, 1995 Dr. Emily W. Matlin, an osteopath, performed a neurologic examination. She noted the history of appellant's injury on September 9, 1994 and the treatment she received. Dr. Matlin indicated that appellant told her that the pain spread from her thighs through her entire left side including her low back and anterior chest. She noted that appellant returned to limited duty on December 28, 1994. Dr. Matlin recorded that appellant injured her back in 1980 and fell at home in 1990 or 1991 when she slipped on ice and injured her hip. She concluded that the MRI scan of appellant's spine showed no abnormalities. Her physical examination also revealed no objective abnormalities. Dr. Matlin diagnosed mild left sacroiliac discomfort and stated that her examination was unremarkable.

On March 25, 1995 Dr. Blake diagnosed degenerative disc disease, a left knee sprain, a chest contusion and a muscle sprain mid dorsals. He checked "yes" to indicate the conditions were related to an employment activity. Dr. Blake also indicated that appellant was involved in a motor vehicle accident on February 3, 1995.

By decision dated July 21, 1995, the Office ordered that the claim for compensation after September 14, 1994 be denied, because the medical evidence was insufficient to establish work-related disability for the period claimed. In an accompanying memorandum, the Office noted that after September 15, 1994 none of the medical evidence established continuing disability except for the report of Dr. Blake, a chiropractor.

On August 3, 1995 Dr. Bruce Goodman, an orthopedic surgeon, examined appellant. He indicated that appellant first experienced low back pain in 1980 or 1981. This injury resulted from her being struck in the back by a piece of equipment at work. Dr. Goodman noted another episode of discomfort in the neck and shoulders in November 1981. He recorded that she suffered a lumbosacral strain on June 9, 1993. Dr. Goodman stated that appellant was injured on September 9, 1994 when she was struck over the anterior aspect of both thighs while working. He noted a car accident on February 3, 1995 which caused neck discomfort. Dr. Goodman indicated that appellant was injured on July 25, 1995 when her back locked up at work. He performed a physical examination, which rendered normal findings except for appellant's subjective complaints. Dr. Goodman opined that he found no objective findings to account for appellant's symptoms.

On August 14, 1995 appellant requested an oral hearing.

On August 16, 1996 Dr. Walter C. Peppelman, Jr., an osteopath, noted that appellant complained of upper and lower back pain, pain in her knees and thighs, chest pain, abdominal pain and numbness in her limbs. He noted that appellant suffered an accident in September 1994, that appellant had an automobile accident in February 1995 and that she was injured at work on July 25, 1995. Dr. Peppelman indicated that appellant's x-rays and MRI scan looked good and that he could not explain her subjective symptoms. He stated that appellant could return to her usual employment.

On August 24, 1995 Dr. Steven E. Morganstein, an osteopath, examined appellant and noted symptoms involving pain in the upper back, low back, bilateral knees and legs, chest and left hand. Appellant related the symptoms to her September 1994 injury. Dr. Morganstein reviewed appellant's treatment history and noted that appellant was injured in a February 3, 1995 car accident, where her neck was injured. He also noted that appellant was injured on July 25, 1995 when her back locked up at work. Following his physical examination, he concluded that appellant displayed signs consistent with chronic pain syndrome. Dr. Morganstein noted symptom magnification and no significant objective findings on examination.

On September 14, 1995 Dr. Morganstein indicated that appellant could return to full duty without restrictions. He stated that he gave appellant a functional capacities evaluation and that appellant demonstrated inconsistent and inappropriate illness behavior. Dr. Morganstein noted that appellant showed symptom magnification. He stated that based on the lack of true objective findings and appellant's positive Waddell's sign, that appellant's symptoms failed to correlate with the objective findings.

On March 28, 1996 Dr. Jason J. Litton reviewed the history of appellant's September 9, 1994 injury and diagnosed low back pain. He indicated that appellant could return to her preinjury job without restriction.

On April 8, 1996 Dr. Douglas K. Sanderson, a Board-certified orthopedic surgeon, examined appellant for continuing pain in the right lower back, lower extremities, left upper extremity, chest and epigastric area. He noted that appellant related these symptoms to her September 1994 employment injury. She stated that at that time a 300 to 400 pound nester struck her case knocked it into her and knocked her backwards. Dr. Sanderson noted that appellant provoked these symptoms again in July 1995 when she bent while casing mail. He indicated that he did not review her MRI scan. Dr. Sanderson diagnosed chronic muscle strain related to peripheral nerve irritability and dysfunction. He subsequently checked "yes" to indicated that the condition found was caused or aggravated by an employment activity. On May 3, June 5, July 22 and August 21, 1996 Dr. Sanderson indicated that appellant remained disabled from work.

An oral hearing was held on November 20, 1996.

On December 18, 1996 Dr. Sanderson stated that he had treated appellant since April 8, 1996. He noted that appellant dated the onset of her problems to a September 9, 1994 employment incident. Dr. Sanderson stated that appellant told him that several nesters, each weighing 300 to 400 pounds, got out of control and struck her case knocking it onto her and knocking her backwards. He noted that appellant was reinjured in July 1995 and in early 1996. Dr. Sanderson diagnosed myofascial pain syndrome effecting multiple muscle groups. He opined that appellant's orthopedic problems were a direct result of her September 1994 injury.

By decision dated January 16, 1997, the Office hearing representative found that appellant's September 9, 1994 accepted injury, for a contusion of her left thigh caused no disability after September 19, 1994. The hearing representative noted that Dr. Sanderson, the only physician of record diagnosing continuing disability, exaggerated the history of the injury, failed to discuss appellant's previous back problems and injuries and did not discuss the contrary

medical opinions of record finding no objective evidence of disability relating to the September 9, 1994 injury.

On February 4, 1997 appellant requested reconsideration.

In support, appellant submitted a June 5, 1996 report, from Dr. Sanderson indicating that appellant was incapable of performing limited-duty work. On June 26, 1996 he stated that appellant could return to a limited-duty position working four hours per day. On August 21, 1996 Dr. Sanderson indicated that a moderate regression in appellant's status rendered her unable to perform any gainful employment. By letter dated September 19, 1996, he again indicated appellant could perform limited-duty work.

On January 29, 1997 Dr. Sanderson stated that it was immaterial that appellant did not relate her previous back injuries to him because she worked on a daily basis following the injuries. He opined that appellant had myofascial pain syndrome as a direct result of the September 9, 1994 work incident.

In a February 11, 1997 progress note, Dr. Sanderson indicated that appellant continued to complain of symptoms in her back and abdomen.

On April 18, 1997 Dr. Jay J. Cho, a Board-certified psychiatrist, indicated that appellant was unable to return to work.

By decision dated May 2, 1997, the Office reviewed the case on its merits and found that the evidence submitted in support of the application was not sufficient to warrant modification of the previous decision. In an accompanying memorandum, the Office noted that none of the medical evidence submitted in support of the request for reconsideration contained a convincing, well-reasoned explanation based on a proper factual background as to why appellant's complaints on or after September 19, 1994 were related to her employment.

Appellant subsequently requested reconsideration. In support, appellant submitted a May 20, 1997 letter, from Dr. Sanderson indicating, "[T]he fact that [appellant] had not had similar problems prior to the incident at work of September 1994 and the additional fact that she has not since had a single day totally free of such problems would lead any reasoning individual to conclude that she has not recovered from her original injury."

By decision dated August 13, 1997, the Office reviewed the case on its merits and determined that the evidence submitted in support of the application was not sufficient to warrant modification of the previous decision. In an accompanying memorandum, the Office indicated that Dr. Sanderson's May 20, 1997 letter, failed to contain a medical rationale for his conclusion that appellant's present condition was related to her September 9, 1994 injury.

On August 11, 1997 appellant again requested reconsideration.

By decision dated January 20, 1998, the Office denied the request for review because the evidence submitted in its support was repetitious and insufficient to warrant review of the prior

decision. In an accompanying memorandum, the Office noted that appellant failed to submit any new evidence or argument.

On April 22, 1998 appellant requested reconsideration. In support, appellant submitted an April 10, 1998 report from Dr. Cho. He stated that he had treated appellant for pain in her neck, left arm, thoracic, low back and left leg. Dr. Cho stated that appellant told him that she was injured on September 9, 1994 while working. He indicated that he initially diagnosed cervical spondylosis with radiculitis and low back pain with radiculitis and muscle ligament strain, chronic, with very deconditioning syndrome. Dr. Cho also diagnosed anxiety/depression disorder. He indicated that appellant was showing steady improvement. Dr. Cho noted that an August 1997 MRI scan revealed moderate spondylosis at C4-5 and through C6-7 with disc space narrowing at C5-6 and C6-7. He noted that a lumbar spine x-ray showed degenerative changes at the facet joint in the lumbar spine and that an electromyography/nerve conduction study done in June 1997 showed radiculitis at the left C6 nerve and the left L5 nerve root without any definite radiculopathy. Based on his physical examination, appellant still showed a left C6 nerve problem in the arm and improving low back pain. Dr. Cho stated that “[A]t this time, this patient still suffers with neck, thoracic, low back, arm and leg problems, as a result of an injury on September 9, 1994 and is still only able to do only limited light-duty job.”

By decision dated July 24, 1998, the Office reviewed the merits of the claim and denied modification because the evidence submitted in support of the application for review was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office indicated that Dr. Cho failed to provide any medical rationale for his conclusion that appellant suffered residuals from her September 9, 1994 injury.

The Board finds that the Office met its burden to terminate appellant’s compensation benefits effective September 19, 1994.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits. After it has been determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹

In the present case, Drs. Blake, Sanderson and Cho provided opinions indicating that appellant continued to suffer residuals from her September 9, 1994 accepted employment injury. In his opinions dated March 25, 1995 and November 9, 1994, Dr. Blake, a chiropractor, indicated that appellant continued to suffer disability as a result of his September 9, 1994 injury. Dr. Blake’s opinion, however, is not of probative value inasmuch as the record is devoid of any evidence establishing a spinal subluxation.²

In his opinion dated April 10, 1998, Dr. Cho, a physician Board-certified in physical medicine and rehabilitation, stated that “[A]t this time, this patient still suffers with neck,

¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

² 5 U.S.C. §§ 8101(2) and (3); *George E. Williams*, 44 ECAB 530 (1993).

thoracic, low back, arm and leg problems, as a result of an injury on September 9, 1994 and is still only able to do only limited light-duty job.” Dr. Cho, however, failed to support his conclusion with any rationale explaining why appellant’s condition was related to his September 9, 1994 injury. His opinion is, therefore, entitled to little probative value.³

Dr. Sanderson, appellant’s treating physician and a Board-certified orthopedic surgeon, provided the remaining medical opinion evidence relating appellant’s present condition to her September 1994 injury. On May 20, 1997 he indicated, “[T]he fact that [appellant] had not had similar problems prior to the incident at work of September 1994 and the additional fact that she has not since had a single day totally free of such problems would lead any reasoning individual to conclude that she has not recovered from her original injury.” The Board has stated that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relation.⁴ On January 29, 1997 Dr. Sanderson opined that appellant’s myofascial pain syndrome was a direct result of her September 9, 1994 work incident. Because he failed to provide any explanation for this conclusion his opinion is entitled to little weight.⁵ Similarly, Dr. Sanderson failed to provide any medical explanation for relating appellant’s present condition to her September 9, 1994 injury, in his reports dated December 18 and April 8, 1996. These reports are also entitled to little weight.⁶

In contrast to the unexplained reports of Drs. Cho and Sanderson, the record contains several reports from physicians explaining in medical terms that appellant’s September 9, 1994 injury had resolved. On November 18, 1994 Dr. Green, an osteopath, performed a thorough examination and noted that appellant was poorly motivated to perform. Based on a normal MRI scan he concluded that appellant could return to his usual employment. Similarly, Dr. Goodman, a orthopedic surgeon, reviewed appellant’s history and concluded that because all of the objective tests he performed were negative that appellant’s condition had resolved. On August 16, 1995 Dr. Peppelman, an osteopath, concluded that because appellant’s x-rays and MRI scan were normal, appellant could return to her usual employment. Finally, Dr. Morganstein, an osteopath, examined appellant on August 24, 1995. He reported that appellant exaggerated her symptoms and that there were no objective findings on examination. As a result, he concluded that appellant could return to full duty in his report dated September 14, 1995.

Drs. Morganstein, Peppelman, Goodman and Green each conducted a complete examination of appellant and explained that because they found no objective evidence of disability that appellant’s September 9, 1994 condition had resolved. Because their opinions constitute the only rationalized medical evidence addressing whether appellant has residuals

³ *Carolyn F. Allen*, 47 ECAB 240 (1995); *Cheryl L. Veale*, 47 ECAB 607 (1996).

⁴ *Kimper Lee*, 45 ECAB 565 (1994).

⁵ *See Carolyn F. Allen*, *supra* note 3; *Cheryl L. Veale*, *supra* note 3.

⁶ *Id.*

from her September 9, 1994 accepted employment injury, their opinions constitute the weight of the medical evidence. Accordingly, the Office met its burden to terminate appellant's benefits.

The decision of the Office of Workers' Compensation Programs dated July 24, 1998 is affirmed.

Dated, Washington, D.C.
August 5, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member